IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 629 OF 1989

M/s. Laxman Deoram & Co. & ors. ... Appellants

V/s

M/s. Dipak Girdhardas Shah ... Respondent

Smt. S.A. Mudbidri for the appellants.

Shri N.V. Walawalkar for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 1ST DEC., 2004.

P.C.:

1. This appeal is preferred by the appellant defendants against the decree passed by the District Judge, Satara dated 23.10.1989 dismissing the appeal and confirming the order of the Civil Judge, Jr. Divn., Khandala dated 22.5.1986 decreeing the plaintiff's suit for recovery of the amount towards price of the goods supplied by the plaintiff.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff, the proprietory firm of Lonand, carrying on onion business and the commission agent, having the license of Market Committee, had sent two truk loads of onion to the defendants for sale on 30.9.1977 and 9.10.1977. It was alleged that the person from the defendants' firm had come to Lonand in the month of Sept., 1977 and instructed the plaintiff to send the onion at the interval of 10 days. Accordingly, two truck loads were sent. When the amount was demanded, the defendants informed the plaintiff that it was paid to Manikchand Nathamal Shelot. Plaintiff alleged that said Manikchand had no concern whatsoever with the goods. The plaintiff thereafter served the notice on the defendants, but the defendants did not pay any amount. The amount was calculated at Rs.20,000/- and hence the suit came to be filed for recovery of the said amount with interest thereon.

The defendants challenged the suit. According to them, the goods were never received by the defendants in the truck loads referred to by the plaintiff on the same dates but they were sent by Manikchand Nathmal to whom the payment was already made. It was also contended that the original firm of the defendants was also

dissolved and the suit was not tenable against the old firm. According to the defendants, the plaintiff had no locus-standi to file the suit. On such and other grounds, the suit was sought to be dismissed with no order as to costs.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that he had sent the goods worth Rs.24,675.50 to the defendants as alleged and defendants had received the same. It was further held that the plaintiff firm is entitled for interest as well as the suit amount. Hence, the suit came to be decreed in toto.

The appeal was carried to the District Court, Satara. The learned District Judge, Satara, heard both sides and dismissed the appeal on merits. Hence the present appeal is filed.

5. Initially, it may be noted that, at the admission stage, the so-called substantial question was framed to the effect that, whether the plaintiff had any locus-standi to file the suit ?

6. At the outset, it may be noted that, it is clear

from the record as well as the judgment of both the Courts below that the so-called substantial question of law is in fact decided on facts and has been adjudicated on the basis of factual aspects of evidence and, therefore, there was no substantial question of law involved. However, since the appeal is admitted, it would be necessary to look into the merits of the dispute.

7. The crux of the matter appears to be that though the licence of the Market Committee for the purchase of the goods was in the name of the plaintiff, the Kata Patties (weighment slips) were prepared in the name of the plaintiff and for convenience the name of Manikchand Nathmal also appeared in some of the slips so as to convey that the goods were purchased by Manikchand Nathmal under the licence of the plaintiff and through the plaintiff. This aspect has given rise to the dispute when defendants contended that the price of the goods was already paid to Manikchand Nathmal and nothing was payable to the plaintiff. In this regard, it must be noted that the documentary evidence consisting of Exhs.34 and 35 and letters Exhs.33 and 36 clearly show that the goods were sent by the plaintiff and not by Manikchand Nathmal. If that was the position,

defendants were definitely accountable to the plaintiff. The lower appellate Court has observed that, even assuming that it was disclosed or known to the defendants that the goods sent belongs to a particular person, even then the defendants have to act as per the instructions contained in the letters sent by the sender of the goods. The plaintiff had specifically instructed the defendants to send the amount to them and, therefore, defendants had no business to make direct payment to Manikchand Nathmal. I am totally agree with this reasoning adopted by the lower appellate Court Judge and hold that both the Courts below have appreciated the entire evidence correctly and properly and, therefore, it would brook no interference.

In the result, the appeal stands dismissed in limine with no order as to costs.

.....